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Parashat Kedoshim

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Lifnei Iveir: Applications and Calculations

By Eitan Mermelstein ('21)

This week's Parashah, Parashat Kedoshim, contains one of the most famous commandments in the entire Torah: "*Lo Tekalleil Cheireish VeLifnei Iveir Lo Titein Michshol VeYareita Mei'Elokecha Ani Hashem,*" "Do not curse a deaf man, and do not place a stumbling block before a blind person, and fear from your God, I am Hashem" (VaYkira 19:14). This Pasuk seems to convey a nice sentiment which is in line with the common theme in the Torah of caring for the less fortunate. However, Rashi (VaYikra 19:14 s.v. *Lo Tekaleil Cheiresih* and *Lifnei Iveir Lo Titein Michshol*), famously writes that these injunctions do not apply only to the deaf and blind. Rather, the Pasuk is saying that you should not curse any living person, or give anyone bad advice in order to profit off of his or her mistakes.

Ramban (VaYikra 19:14 s.v. *Lo Tekaleil Cheireish*), on the other hand, understands this verse literally. He says that this is the inverse of the obligation not to curse a prince or judge (Shemot 22:27). Whereas that Pasuk warns us to protect the honorable and powerful, the Torah here is trying to protect those who cannot protect themselves. The blind person cannot see the stumbling block or the person who placed it there. Similarly, the deaf man cannot hear the curse that someone may have placed on him. Therefore, the Pasuk ends with the phrase "And you should fear from your God," because although the victim cannot comprehend what was done to him or her, God can, and He will act as an avenger for the victim.

In addition, Rabbeinu Bechayei (VaYikra 19:14 s.v. *Lo Tekaleil Cheireish*) writes that the Torah uses the deaf person as an example because if one is not allowed to curse a deaf Jew, even though he will not be directly embarrassed by the insult, of course one cannot curse a Jew who can hear, who will be embarrassed and angered by the words of imprecation. Furthermore, no one will ever know the sin of someone who curses a deaf person if there are no bystanders. Therefore, this restriction is also necessary, with the goal of guarding the language that we use every day.

Rabbeinu Yonah, in his book *Sha'arei Teshuvah* (3:52), writes that this Pasuk is an explicit warning to Torah scholars that

they must be diligent not to lead the Jews astray with false halachic rulings. This also applies when the scholar instructs them falsely unintentionally. Rabbeinu Yonah further elaborates on this mitzvah in his commentary at the end of Masechet Chullin (no longer extant, but quoted in the Beit Yoseif). He writes that this prohibition applies to a case where one would cause another Jew to sin. For example, based on this Pasuk, you are not allowed to give food to someone who does not know how to say a Berachah (without teaching him or her the Berachah), because it will cause the recipient to sin. However, the Beit Yosef, quoted by the Shenei Luchot HaBerit (Shaar HaOti'ot, Kedushat Ha'Achilah, Ma'achalot Assurot 8:3), writes that this prohibition does not apply to giving food to a poor person.

The reasoning of the Beit Yosef is compelling; if the point of this mitzvah is to help those who are less fortunate and cannot help themselves, then it would not make sense that the specifics of this prohibition would make it harder to accomplish this goal. However, this prohibition is not only meant to help the poor, but also the one who gives to him. Thus, it is clear according to this interpretation why Tzedakah is the exception to this prohibition. Tzedakah is meant to improve the giver, to help him or her become a more giving person. Therefore, we allow Tzedakah to override the general rule of Lifnei Iveir; as the goal of both commandments is to improve one's attributes and protect the weak, one should not preclude the other.

THE PRECISION OF JUXTAPOSITIONS

By Natan Lehman ('19)

At first glance, Parashat Kedoshim may seem unorganized, because it lists random Mitzvot in no apparent order. However, if one invests further observation, it becomes apparently clear that there is in fact a specific reason for each juxtaposition.

Here are a few examples:

In the first Aliyah, the Mitzvah to honor one's parents is juxtaposed with the Mitzvah to observe Shabbat. Rashi (VaYikra 19:3 s.v. *Ish Imo Ve'Aviv TiRa'u*) explains that this juxtaposition comes to teach a very important and fundamental Halachah: you may not listen to your parent if he or she tells you to violate the Torah.

Rashi (BeResihit 6:11 s.v. *VaTemalei Ha'Aretz Chamas*) notes that Noach's generation was killed because of all the "*Chamas*" (robbery) they committed. Later in the first Aliyah of Parashat Kedoshim (19:11) the Pasuk lists three consecutive negative commandments: "*Lo Tignovu VeLo Techachashu VeLo TeShakru,*" "Do not steal, and do not deal deceitfully, and do not lie." Rashi (VaYikra 19:11 s.v. *Lo Tignovu*) states that these

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commandments are the order in which one will act when he begins stealing and ultimately lead to a society's' downfall.

A similar connection is presented later on in Perek 19:17: "*Lo Telech Rachil BeAmecha,*" "Do not be a gossip monger amongst the nation" and "*Lo Ta'amod Al Dam Rei'echa,*" "do not stand idly by the blood of your friend." Many Rishonim suggest that speaking Lashon HaRa about a person is similar to killing the person. However, I believe that there is another possible explanation. "*Lo Ta'amod Al Dam Rei'echa*" is a passive Aveirah and "*Lo Teileich Rachil Be'Amecha*" is an active Aveirah. In order not to violate these Aveirot, one must be passive not to speak Lashon HaRa and active to active to save someone in danger. The dynamic relationship between these two Halachot represents a core religious belief that we must be a wholesome Jew.

Finally, Rashi comments (20:7 s.v. *VeHitkadishtem*) that the juxtaposition between being holy and worshipping Avodah Zara implies that one cannot even think about worshipping Avodah Zara.

I hope that these insights in the Parashah will inspire us to do what is right in the eyes of Hashem.

AMOS AND AM HANIVCHAR

By Ephraim Helfgot ('20)

The Haftarah of Parashat Kedoshim is the final passage of Sefer Amos, who faced grave danger in the Northern Kingdom of Israel due to his prophecies of destruction as retribution for injustice (Amos 7:10-13). Unfazed, Amos persisted, preaching the word of God to those who brought him the word of the king. But despite his maltreatment, Amos maintained a deep commitment to the betterment of Bnei Yisrael; he pleaded on their behalf for the annulment of two separate Divine decrees of destruction, and God relented in both cases (Amos 1:6). In the final Perek of the Sefer, Amos is characteristic in his Nevu'ah: While God will punish the Kingdom of Israel with exile and suffering for its transgressions, namely the exploitation of the poor and idolatry, He will not annihilate His people, and once they are purified of sin, He will restore them to the Land of Israel and grant them prosperity.

But while Amos's final prophecy is a fitting conclusion to the rest of the Sefer, the first line of the Haftarah is startling, if not shocking: "*HaLo KiVnei Kushiyyim Atem Li Bnei Yisrael,*" "Are you not like the Children of the Ethiopians to me, O Children of Israel?" (Amos 9:7). Hashem, as reported by Amos, seems (Chas VeShalom) to be disregarding the special relationship between Him and Am Yisrael, as the "*HaLo,*" "Is it not," construction, as used by the Nevi'im, is normally the rhetorical question-form of the statement "It is" (in our case, "You are like the Children of Ethiopia to Me."). And yet, only seven Pesukim later, Hashem declares, "*VeShavti Et Shevut Ami Yisrael,*" "And I will return the captivity of my nation, Israel" (ibid. 9:14). How is one to

reconcile the sentiment of the first Pasuk with that of the latter?

The Gemara (Mo'eid Katan 16b) provides a reading of the Pasuk which is almost diametrically opposed to our original interpretation. Just as Ethiopians in the ancient world were easily recognized due to their dark skin, so too Bnei Yisrael are easily recognized by their deeds. According to this reading of the Pasuk, Hashem is affirming the preciousness of Am Yisrael, whose actions (even in times of sin) are extraordinary in His eyes. Malbim (Amos 9:7) interprets the Pasuk in an identical fashion. In a similar vein, Yonatan Ben Uziel, the leading student of Hillel (Sukkah 28a) and author of the Aramaic Targum to Nevi'im, translates "*Kushiyyim,*" "Ethiopians," as "*Rechimin,*" "Beloved."

The Metzudat David (ibid. s.v. *HaLo KiVnei Kushiyyim*) interprets the word Kushiyyim as a reference to servants, as many Ethiopians and other Africans were unfortunately enslaved throughout world history (including in this very country, until the ratification of the Thirteenth Amendment). The Pasuk thus reads, "Are you not my servants, O Children of Israel?"

Finally, Rashi (ibid. s.v. *HaLo KiVnei Kushiyyim*) writes that the intent of the Pasuk is to provide a Kal VaChomer: If other nations are punished for their sins, then surely God must punish Bnei Yisrael for their iniquities. Accordingly, the Pasuk is an affirmation of the special relationship between Hashem and Klal Yisrael. This is borne out in Rashi's interpretation of the continuation of the Pasuk (ibid. s.v. *HaLo*), which he takes to be God's reminder to Bnei Yisrael that He saved other nations from distress, but only chose to give the Torah to one People.

All told, Chazal and the Rishonim present three renderings of the Pasuk: "Are you not special and unique to me, O Children of Israel?", "Are you not servants to me, O Children of Israel?", and "Are you not at least at the spiritual level of the children of the Ethiopians, O Children of Israel?". Common to all of these interpretations is the paramount importance and continual binding nature of the covenant at Har Sinai, in which we bound ourselves to be God's nation. May we fulfill this covenant to the fullest extent, and merit to experience the final Pasuk of Amos: "*UNetatim Al Admatam VeLo Yinatshu Od Mei'Al Admatam Asher Natati Lahem Amar Hashem Elohecha,*" "And I will plant them on their land, and they will never again be plucked from upon their land which I have given them, says Hashem, your God" (Amos 9:15).

GRAPPLING WITH THE RECALCITRANT ACH MUMAR

PART TWO

By Rabbi Chaim Jachter

Editors' Note: This article is the second piece of a three-part series on extracting a Chalitzah from an uncooperative, irreligious brother-in law. The first article of the series can be found on <https://www.koltorah.org>

Reason Number One for Rav Yehudai Ga'on

The Mordechai explains that a Mumar loses his status as a brother, as we find in the context of Hilchot Ribbit (at least according to the Shulchan Aruch, Yoreh De'ah 159:2, wherein

Rav Yoseif Karo permits one to lend money with interest to a Mumar; the Rama recommends to be strict when possible), and thus the Ach Mumar does not have the Halachic status of a brother to be Zokeik LeYibum.

The Avnei Milu'im (Even Ha'Ezer 157), however, challenges this explanation. The definitions of the word "Ach," "brother," regarding Ribbit and Yibum are different. Concerning Ribbit, the term 'brother' refers to the collective brotherhood of the Jewish People, and so a person who does not behave like a Jew loses his status as a brother. Brotherhood in the context of Yibum, by contrast, is determined by the blood relationship that brothers share, and thus it is not related to whether the brother is a Mumar or an observant Jew.

Rashi firmly rejects Rav Yehudai Ga'on's ostensible line of reasoning in our case of Ach Mumar, as well as in a case of Ribbit. He marshals an important phrase from Sanhedrin 44a, "*Chata Yisrael Af Al Pi She-Chata Yisrael Hu*," "Israel has sinned'- even though he sinned, he remains a Jew," to mean that no amount of sin removes a Jew from Klal Yisrael. (It is important to note, on the other hand, that in its original context in Sefer Yehoshua, the phrase "*Chata Yisrael*" refers to Achan, who does not seem to have rejected Judaism in toto, but merely broken one Halachah.) In addition, Rashi does not see a difference when the brother completely abandoned Torah, since Yevamot 23a states that any brother is considered a Yavam, including a Mamzeir. If so, a Mumar should also Zokeik LeYibum. However, Teshuvot Tzemach Tzedek (number 312) argues that just as in the context of Hilchot Ribbit we essentially do not follow Rashi, so too in the context of Hilchot Yibum do not follow Rashi.

Evidence is cited by the Aruch HaShulchan against Rav Yehudai Ga'on from the fact that Eisav, who is defined as a Mumar (Kiddushin 17b), is considered a brother in the Torah. The Pasuk specifically states (Devarim 2:4), "*Atem Ovrin BiGvul Acheichem Bnei Eisav*," "You are passing through the boundary of your brethren, the Children of Eisav," and (Malachi 1:2) "*HaLo Ach Eisav LeYa'akov*," "Is Eisav not a brother to Ya'akov?" However, Teshuvot Ya'avetz (number 30) responds by distinguishing between the narrative sections of the Torah, where brotherhood is defined in broad terms, and the halachic portions of the Torah, where a more formal definition of brotherhood applies. In the context of Yibum, one may argue a Mumar is not regarded as a brother, despite the Torah's loose description of Eisav as an Ach.

On the other hand, we should note that the Chazon Ish (Yoreh Dei'ah 2:16 and 2:28) argues that non-observant Jews today are not Mumarim. This is because one is classified as a Mumar only after receiving Tochachah. Today, since we lack anyone who can administer proper, halachic Tochachah, non-observant Jews are regarded as "pre-Tochachah" and thus not classified as Mumarim.

Reason Number Two for Rav Yehudai Ga'on

The Ohr Zaru'a presents another reason for Rav Yehudai's ruling. He notes the halachic concept of "*Kol DeMekadesih ADA'ata DeRabbannan Mekadeish*," "Everyone marries according to the will of the Rabbis" (Gittin 33a). In other words, every marriage

contains an implicit condition that Chazal must accept it. Accordingly, Chazal may veto a marriage if one contracts it in an unethical manner. Indeed, Chazal may effect a divorce even when the Get given by the husband is invalid on a biblical level. Tosafot (Ketubot 3a s.v. *ADa'ata* and Gittin 33a s.v. *Kol*) note that we explicitly authorize Chazal in this manner, as the groom states that he is marrying his wife "*KeDat Moshe VeYisrael*," "According to the laws of Moses and Israel."

The Ohr Zarua seeks to apply the idea of Hafka'at Kidushin (annulment of a marriage) to the case of the Ach Mumar, since Chazal did not wish marriages to result in noxious situations such as a woman falling into Zika LeYibum to an Ach Mumar.

However, a major problem exists with implementing Hafka'at Kiddushin in the case of Ach Mumar. The Gemara records many objectionable marriages that are binding, indicating that the Rabbis do not annul them. For example, Chazal do not annul the marriage of a Kohein and a divorcee, although such a marriage is explicitly prohibited by the Torah (Vayikra 21:7). While criteria presumably exist to determine when marriages may be annulled, the Gemara never articulates them. The Rashba (Ketubot 3a) provides some insight:

One may ask why a woman should remain an Agunah if her husband was lost in a body of water without finite boundaries (Mayim She'ein Lahem Sof). Let the Rabbis annul the marriage! The answer is that the Rabbis do not annul a marriage unless the man has handed his wife at least a [Rabbinically acceptable] Get.

Elsewhere (Teshuvot 1:1185), the Rashba adds:

We do not say that whenever a husband entered a marriage in an unethical manner the rabbis annulled the marriage. **Rather, we believe that only in those specific instances in which Chazal state that the marriage is annulled do we actually annul the marriage.**

The Beit Yosef (Even Ha'Ezer 28) and Rama (Even Ha'Ezer 28:21) clearly affirm that we do not invoke Hafka'at Kiddushin when it is not specifically employed by the Gemara. The Rama writes:

A community that institutes a policy, accepted by the entire community, that anyone who marries in the absence of ten men will have his marriage invalidated must nevertheless be strict and require a get [in this circumstance].

Accordingly, since the idea of Hafka'at Kidushin does not appear in the Gemara in the context of an Ach Mumar, we may conclude that later authorities are not authorized by Halacha to by Mafki'a the Kidushin in such a case. However, the Ohr Zarua counters that since so many Ge'onim mention that Ach Mumar is not Zokeik L'Yibum, we can argue that the Ge'onim had the authority to apply Hafka'at Kidushin (or had a tradition from the time of the Gemara that Chazal made such a Takanah -

we often assume that the Ge'onim possessed and applied oral traditions from Chazal).

The problem with this approach is the aforementioned Gemara (Yevamos 47b) which states that the Kiddushin of a Mumar count as Kiddushin. We thus see that Chazal do not apply Hafka'at Kiddushin in the case of a Mumar. We may answer that 1) according to the aforementioned opinion of Radach, the Gemara in Yevamot applies only to a Mumar who observes some Torah practices. 2) A Mumar is not Mekadeish Al Da'at Rabbanan, and thus Chazal cannot be Mafki'a his Kidushin if he was the original husband; however, in the case of an Ach Mumar, the Kiddushin was effected by an observant Jew, and thus the Kiddushin was ADA'ata DeRabanan and possibly annulled when the woman became Zekuka LeYibum to the Ach Mumar.

Reason Number Three for Rav Yehudai Ga'on

Ritva (Yevamot 47b) agrees with Rashi that a Mumar remains a Jew despite his apostasy, based on the Gemara (Yevamos 47b). However, he agrees with Rav Yehudai Ga'on that a Mumar is not Zokeik LeYibum. This is due to a specific issue regarding Yibum. The Torah states that the purpose of Yibum is "*VeHayah HaBechor Asher Teileid Yakum Al Sheim Achiv HaMeit VeLo Yimacheh Shemo MiYisrael*," "And it shall be, the firstborn whom she bears shall stand on his [the Yavam's] dead brother's name, so that his name not be wiped out from Israel." A Mumar's name, however, is already destroyed in Yisrael. Hence, how could a Mumar possibly be Mekayeim Sheim Achiv B'Yisrael (uphold his brother's name in Israel), when he himself is lacking a Sheim!?

One could easily challenge Ritva's approach. After all, since when do we apply the Halachah based on the reason for the Mitzvah? The Gemara (Bava Metzia 115a) records a Tannaitic debate about this matter, and the Halachah follows the opinion that Lo Darshinan Ta'ama DiKra (the Halacha is not applied based on the reason for the Mitzvah). This seems to challenge the position of Ritva. However, Teshuvot Torat Chesed (Even Ha'Ezer 20) argues (based on Bava Metzia 115a) that if the reason for the prohibition is stated explicitly in the Pasuk, then all would agree that Darshinan Ta'ama DiKra, and so the Ach Mumar may be excluded from the Halachot of Yibum and Chalitzah.

Reason Number Four for Rav Yehudai Ga'on

Teshuvot Sho'eil UMeishiv (2:3:91) presents another explanation for Rav Yehudai Ga'on. Although the Mumar is regarded as a Jew, he is ineligible to perform Yibum. The Gemara (Yevamot 49b) cites Abba Sh'aul (whom Ashkenazic Jews follow), who states, "*HaKoneis Et Yevimto LeShem Noi LeShum Ishut ULeShum Davar Acheir Kellu Pogei'a Be'Ervah VeKarov Ani Be'Eina Lihiyot HaVelad Mamzeir*," "One who marries his sister-in-law [Yevama] because of beauty, because of marriage, or because of any other thing (except for fulfillment of the Mitzvah) touches on illicit relations, and I am close to saying that the child is illegitimate." Thus, since the Mumar may be presumed not to have the intention LeSheim Mitzvah, he is ineligible for Yibum. Since the Mumar is ineligible for Yibum, he is ineligible for Chalitzah, as the Gemara (Yevamot 3a) states, "*Kol She'Eini Oleh LeYibum Eino Oleh LeChalitzah*," "All who cannot perform Yibum

cannot perform Chalitzah." Thus, the Ach Mumar is not Zokeik LeYibum.

One may respond that this is quite a novel assertion. Abba Sha'ul's position is normally understood as a rabbinic stringency to avoid Yibum for fear of violating the prohibition of having marital relations with one's brother's wife. It is quite shocking to see Abba Shaul's concern taken in a lenient direction to disqualify the Ach Mumar from Chalitzah¹.

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¹ The issue as to whether one's intentions or actions define the character of the action is subject to a debate between Rabba and Rava that is recorded in Menachot 64a. If one believes like Rava that one's intentions define his actions then perhaps we can understand Abba Shaul as articulating a Torah level concern that may be applied both in a stringent and lenient direction.